

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AUDENCIO MALDONADO,

Petitioner,

No. C 14-01920 JSW

v.

WARDEN PARAMO,

ORDER TO SHOW CAUSE

Respondent.

Petitioner Audencio Maldonado, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND

Petitioner was charged with committing a lewd act on a child under fourteen years old. Following a guilty plea, Petitioner was convicted of this charge. Petitioner contends that he did not have the mental capacity to understand and accept a guilty plea.

DISCUSSION

A. Legal Standard.

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

B. Petitioner's Legal Claims.

Petitioner seeks federal habeas corpus relief by way of raising a claim of ineffective assistance of counsel, thus depriving him of due process in violation of the Fifth Amendment. Liberally construed, the claims appear potentially colorable under 28 U.S.C. § 2254 and merit an answer from Respondents.

CONCLUSION

For the foregoing reasons and for good cause shown:

1. Petitioner shall serve by certified mail a copy of this Order and the petition and all attachments thereto upon Respondent.
2. Respondent shall file with the Court and serve on Petitioner, within 60 days of the date of this Order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the administrative record that are relevant to a determination of the issues presented by the petition.
3. If Petitioner wishes to respond to the answer, she shall do so by filing a traverse with the Court and serving it on Respondent within 30 days of her receipt of the answer.

IT IS SO ORDERED.

Dated: June 11, 2015


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE